

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

vs.

EUGENE LAMONT GAVIN

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CRIMINAL NO. 2005-00004-002 ERIE

EXCEPTIONS TO PRE-SENTENCE REPORT

1. The PSR, paragraph 17, page 5, increases the base offense level by +2 because the “amount of cocaine base is at least 20 grams but less than 35 grams”. Although the PSR notes “the defendant minimally provided Michelle Welsh [codefendant] with an [sic] 1/8 ounce of cocaine base on nine occasions...,” the defendant avers that he only supplied said Michelle Welsh with approximately 1/8 ounces on two occasions. In that regard, since 1/8 of an ounce of cocaine base is approximately 3.54 grams, the defendant avers that the amount involved is closer to approximately 7 grams only. If the amount is considered as such, the base offense level would be reduced by two points to 26 (from 28), since under the *Federal Guidelines Manual* it would be considered an amount between 5 to 20 grams, rather than an amount between 20 to 35 grams as noted in the PSR.
2. The PSR, paragraph 27, page 6, noted that the defendant’s “Total Offense Level” is 25. The defendant argues that said “Total Offense Level” should be only 23, for the reasons stated in Exception 1.
3. The PSR, paragraph 67, page 19, states “Based on a total offense level of 25 and a criminal history category of V, the advisory guideline range for imprisonment is 100 to 125 months”. The defendant avers, for the reasons set forth in Exceptions 1 and 2, that the total offense level should be 23 under criminal history category V, thereby reducing the advisory guideline range for imprisonment to 84 to 105 months.

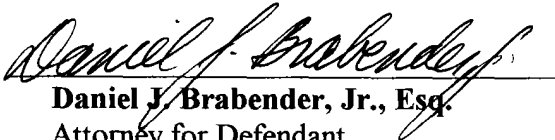
ADDITIONAL MATTER FOR CONSIDERATION

4. Defense counsel notes that Mr. Gavin has accepted his responsibility, has not obstructed justice in any way, and has spared the Government and the Court from the necessity of having a jury trial.

5. The Defendant appears to understand the seriousness of the allegation and is prepared to deal with the mandatory sentence and the high guidelines in any way Your Honor feels fit. In addition, Mr. Gavin has already endured many staggering, non-judicial sanctions. These include further injury to his reputation, the permanent stigma of a federal criminal record, and the public shame he has and will continue to suffer. Mr. Graham has been under the constant cloud of criminal prosecution and has been faced with all the anxieties and uncertainties accompanying it. He has already suffered greatly from the shame, humiliation and agonized uncertainty which has attended this case. Hopefully he can get appropriate treatment, eventually put his GED to work for himself, and eventually become a strong, taxpaying contributor to our society for the benefit of his wife and two young children. Defense counsel feels that no useful purpose would be served by any incarceration in excess of the low end of the argued sentencing guidelines (84 months).
6. The Defendant has been incarcerated at the Erie County Prison for this offense for the most part of the time since his arrest on January 11, 2005. It is argued that the Defendant should be given credit for his time served in ECP for this offense.

Respectfully submitted,

CARNEY & GOOD

By: 
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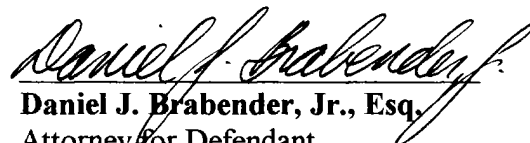
CRIMINAL NO. 2005-00004-002 ERIE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Exceptions to
Pre-Sentence Report was served upon the following on December 14, 2005:

Marshall Piccinini, Assistant U.S. Attorney
17 South Park Row, Room A330
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